

Texas State Board of Examiners of Psychologists

Newsletter Vol. 26, No. 2

New Records Retention and Limitations Periods!!!

At its February 14, 2013 meeting, the Board adopted an amendment to Rule 465.22(d)(2) pertaining to retention of records and data. As amended, the “records retention” provision reads: *in the absence of applicable state and federal laws, rules and regulations, records and test data shall be maintained for a minimum of 7 years after termination of services with the client or subject of evaluation, or 3 years after a client or subject of evaluation reaches the age of majority, whichever is greater.* The amendment became effective March 12, 2013, and governs the records of clients and patients whether the records were created before or after that date.



The limitations period was also changed via amendment to Rule 469.1 pertaining to timeliness of complaints. Thus, a complaint alleging sexual misconduct or a records violation under Rule 465.22(d) is now considered timely if filed within seven years after termination of services or three years after a client reaches the age of majority, whichever is greater. This replaces the 10-year limitations period previously in effect.

The Improper Use of Titles by Licensees: Do you know what you are?

A frequent issue encountered by the Board is licensees using an improper title to describe themselves. By way of example, the Board has seen on numerous occasions licensed psychologists referring to themselves as “Licensed Clinical

Psychologists.” According to Board rule 463.1, the Board issues four types of licenses to practice psychology in Texas:

1. Licensed Psychological Associate;
2. Licensed Specialist in School Psychology;
3. Provisionally Licensed Psychologist; and
4. Licensed Psychologist.

The Board does not issue a Clinical Psychologist license. Thus, the appropriate descriptor for a psychologist is “Licensed Psychologist” or “Psychologist.”

The Board does however, allow psychologists to use a specialty title if certain criteria are met. The criteria which must be met before a psychologist can use a specialty title are set out in Board rule 465.6(d). By way of example, although it is improper for a psychologist to refer to themselves as a “Licensed Clinical Psychologist” or “Licensed Neuropsychologist,” they may refer to themselves as a “Clinical Psychologist” or “Neuropsychologist,” if they have a doctorate in the area of specialization or meet any of the other criteria.

While many licensees mistakenly use an improper title, it has become increasingly important in modern society to utilize appropriate titles to describe oneself, especially as individuals become ever more specialized in their particular fields of study. The Board encourages all licensees to review Board rule 465.6 and conform their titles to the requirements of that rule.

Wanted: A Few Good LPs

The Board is constantly in need of licensed psychologists who are willing and able to act in the capacity of a professional reviewer for complaints processed by the Board. To qualify, you must have been licensed for at least 5 years and have not received any disciplinary sanctions from the Board. As consideration for conducting a professional review, you will receive 6 hours of continuing education (all of which may be used as ethics) as well as a \$100 stipend.



There is never any obligation. Once you are approved to serve, you are placed on a list. If a complaint comes along that is compatible with your background and area(s) of expertise, you will be contacted to see if you are currently available.

If interested, please submit a copy of your current curriculum vitae to Kristin Starr, the Board's General Counsel, and identify any areas of particular expertise. You should also provide a breakdown of your current practice, indicating the portion of your practice that is devoted to each area, e.g. general forensic, clinical, child custody.

This invaluable service is a necessary part of the Board's operations, and is always greatly appreciated!

Duty To Report Legal Actions



Remember that under Rule 469.11, a licensee must report any criminal or civil action within 30 days. This includes an arrest, indictment, conviction, or lawsuit. Failure to report such an action may result in disciplinary action being initiated against the licensee.

Professional Profiles Duty to Update Board



Under Board Rule 461.6, an applicant or licensee must keep their professional file updated by reporting any changes in writing within 90 days. This includes changes to one's phone number as well as address.

Use of Legal Name

Another professional profile issue that has arisen is the use of legal names. While not uncommon, the use of alternate given names is a practice that should be approached with caution. It causes confusion both to the public and to Board staff when responding to inquiries regarding licensees.

Additionally, in the case of alternate surnames, the practice may constitute a violation of Board Rules 465.6(b)(1) and 465.37, as well as the Assumed Business or Professional Name Act, found at Title 5, Subtitle A, Chapter 71 of the Texas Business and Commerce Code.

Informed Consent in the Public Schools: Analysis of Impact of Federal Education Law on Board Rules Governing Informed Consent

The TSBEP has received requests from LSSPs to provide clarification on the issue of informed parental consent in public schools. TSBEP's requirements for obtaining informed consent are provided in Board rule 465.11(a-h). Since these requirements are somewhat different from the requirements contained in federal regulations regarding consent (34 CFR §

300.9) in public schools, some discussion is warranted. The Board directed the following clarification:

Board rule 465.38 (Psychological Services in the Schools) “acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector.” In fact, Board rule 465.38(6) states that “in the event of a conflict between state or federal statutes and Board rules, state or federal statutes control.” Furthermore, Sec. 501.260(c) of the Psychologists’ Licensing Act requires that “the rules of practice for a licensed specialist in school psychology must comply with nationally recognized standards for the practice of school psychology.”

Nationally recognized standards have been developed by the National Association of School Psychologists (NASP). These standards, while not adopted by the TSBEP, are recognized as valuable resources for members of the profession. According to these standards, not all services provided by LSSPs will require informed parental consent. The following excerpt from Standard 1.1.1 of NASP’s Principles for Professional ethics (PPE) provides: *“School psychologists¹ encourage and promote parental participation in school decisions affecting their children (see Standard II.3.10). However, where school psychologists are members of the school’s educational support staff, not all of their services require informed parent consent. It is ethically permissible to provide school-based consultation services regarding a*

¹ The title “school psychologist” in this standard would be applicable to LSSPs in Texas.

² Classroom observations to collect data related to a suspected disability (e.g., using systematic procedures such as time sampling) would require informed consent.

child or adolescent to a student assistance team or teacher without informed parent consent as long as the resulting interventions are under the authority of the teacher and within the scope of typical classroom interventions.”

The NASP standard states that informed parental consent is not *ethically* required for the following activities related to individual students:

- Reviewing an individual student’s educational records
- Conducting classroom observations of a student²
- Assisting with in-class interventions and progress monitoring of a student
- Participating in educational screenings conducted as part of a regular program of instruction

However, the standard further states that informed parental consent is *ethically* required if the consultation about the individual student is likely to be extensive and ongoing or if school actions may result in a significant intrusion on student or family privacy beyond what might be expected in the course of ordinary school activities.

In addition to the national standards that address informed parental consent, there are federal regulations that provide clarification on when informed consent may be required. In 34 CFR §300.302, it states that “*The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.*” (Authority: 20 USC 1414(a)(1)(E)). The terms “evaluation” and “screening” are further defined in the *Analysis of Comments and Changes* section of the Federal Register,

Volume 71, Number 156 (August 14, 2006).
The following definitions are provided:

An “evaluation,” as used in the Act, refers to an individual assessment to determine eligibility for special education and related services, consistent with the evaluation procedures in §§300.301 through 300.311. “Screening,” as used in §300.302 and section 614(a)(1)(E) of the Act, refers to a process that a teacher or specialist uses to determine appropriate instructional strategies. Screening is typically a relatively simple and quick process that can be used with groups of children. Because such screening is not considered an evaluation under §§300.301 through 300.311 to determine eligibility for special education services, parental consent is not required.”

Thus, federal regulations have control over the requirements for informed parental consent in the public schools and the national standards developed by NASP provide further clarification on when consent may or may not be required. LSSPs who participate as members of student assistance teams may not be required to obtain informed parental consent for activities identified in paragraph three above (items #1 - #4), as long as the resulting interventions are:

- under the authority of the teacher; and
- within the scope of typical classroom interventions

LSSPs may be required to obtain informed parental consent for the described activities if:

- the LSSP’s services are likely to be extensive and ongoing; or
- school actions may result in a significant intrusion on student or family privacy beyond what might

be expected in the course of ordinary school activities

In short, if the LSSP’s services are consistent with the federal definition of “screening” and do not involve individual assessment practices (e.g., the administration, scoring and interpretation of norm-referenced assessment instruments with individual students) or the collection of extensive student and family information (beyond the typical information collected for school purposes), then, informed parental consent may not be required.

**Disciplinary Actions:
May 2013 Board Meeting**

Sean Gerard Connolly, Ph.D., Licensed Psychologist and Licensed Specialist in School Psychology (San Antonio)

Complaint: Respondent improperly employed or utilized an individual not licensed by the Board.

Sanction: Respondent was assessed a \$500 administrative penalty, was required to complete 6 hours of continuing education, and was required to implement specified changes to his office practices.

Sharon Hunt, Ph.D., Licensed Psychologist (Houston)

Complaint: Respondent gave visitation recommendations in a custody case concerning children to which she was also providing therapeutic services.

Sanction: Respondent's license was reprimanded. Respondent was also assessed an administrative penalty of \$1,000 and was required to complete 3 hours of continuing education.

Gina Reve Marriott, Ph.D., Licensed Psychologist (Fort Worth)

Complaint: Respondent failed to identify potential limitations on her opinion while testifying as an expert witness for a school district at a due process hearing.

Sanction: Respondent's license was reprimanded. Respondent was also assessed an administrative penalty of \$1,500 and was required to complete 3 hours of continuing education.

David Wesley Milem, M.A., Licensed Specialist in School Psychology (Nacogdoches)

Complaint: Respondent failed to report an arrest within the time prescribed by law.

Sanction: Respondent was assessed an administrative penalty of \$750.

Jennifer Anne Minnix, Ph.D., Provisionally Licensed Psychologist (Houston)

Complaint: Respondent failed to report two arrests within the time prescribed by law.

Sanction: Respondent's license was suspended for a period of two years, the entirety of which was probated upon completion of certain conditions. Respondent was also assessed an administrative penalty in the amount of \$2,500.

Trinidad P. Rodriguez, M.A., Licensed Psychological Associate and Licensed Specialist in School Psychology (San Marcos)

Complaint: Respondent utilized a business card bearing improper credentials.

Sanction: Respondent was assessed an administrative penalty in the amount of \$500 and was required to complete 3 hours of continuing education.

Patrick Michael Turnock, Ph.D., Provisionally Licensed Psychologist (Corinth)

Complaint: Respondent received reciprocal discipline for practicing in another jurisdiction while his license, issued by that jurisdiction, was invalid.

Sanction: Respondent's license was suspended for a period of one year, the entirety of which was probated. Respondent was also assessed an administrative penalty in the amount of \$750.

Lisa Lorene Weaver, Ph.D., Licensed Psychologist (Houston)

Complaint: Respondent failed to report an administrative action within the time prescribed by law.

Sanction: Respondent was assessed an administrative penalty of \$1,000 and was required to complete 3 hours of continuing education.

**Disciplinary Actions:
August 2013 Board Meeting**

Richard Gerald Brake, Pys.D., Licensed Psychologist

(San Antonio)

Complaint: Respondent gave visitation recommendations in open court in response to questions by attorneys in an adoption proceeding without having conducted a child custody evaluation.

Sanction: Respondent was assessed an administrative penalty of \$500.

Susan Dalton Gifford, Ph.D., Licensed Psychologist

(Bedford)

Complaint: Respondent advertised an unlicensed individual as a psychologist on her website.

Sanction: Respondent was assessed an administrative penalty of \$1,500 and was required to complete 6 hours of continuing education.

James E. Goggin, Ph.D., Licensed Psychologist

(Lubbock)

Complaint: Respondent failed to utilize business practices in a manner that safeguards the privacy and confidentiality of patients and clients.

Sanction: Respondent was assessed an administrative penalty of \$750 and was required to complete 3 hours of continuing education.

Karen Kelly Gollaher, Pys.D., Licensed Psychologist

(Missouri City)

Complaint: Respondent failed report an administrative action within the time prescribed by law.

Sanction: Respondent was assessed an administrative penalty of \$1,000 and was required to complete 3 hours of continuing education.

Dana Griffin, M.A., Licensed Specialist in School Psychology

(Houston)

Complaint: Respondent provided psychological services outside of the public school setting.

Sanction: Respondent was assessed an administrative penalty of \$1,500 and was required to complete 3 hours of continuing education.

E. Edward Reitman, Ph.D., Licensed Psychologist

(Houston)

Complaint: Respondent gave visitation recommendations without conducting a proper evaluation.

Sanction: Respondent was assessed an administrative penalty of \$1,500.